

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 08-CR-36

AARON J. JOHNSON,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE RECOMMENDATION
AND DENYING MOTION TO SUPPRESS

On February 23, 2009, Aaron J. Johnson moved to suppress all items of physical evidence seized from property located at 43401 Twin Pine Road or Circle in Laytonville, California, on or about January 23, 2008. Johnson argues that the warrant for the search, issued by a magistrate judge in the Northern District of California, was not supported by probable cause. The United States responded to the motion.

On April 2, 2009, Magistrate Judge Aaron E. Goodstein issued his recommendation that Johnson's motion to suppress be denied. The time for Johnson to object to the recommendation expired on or about April 16, 2009. No objection was ever filed.

Although magistrate judges are permitted to decide many nondispositive motions, such as motions for a bill of particulars, see 28 U.S.C. § 636(b)(1)(A); Fed. R. Crim. P. 59(a), regarding certain matters enumerated in § 636(b)(1)(A), including motions to suppress evidence, a magistrate judge may only propose findings and make recommendations, § 636(b)(1)(A), (B); Fed. R. Crim. P. 59(b)(1). The district judge reviews de novo the recommendations of the magistrate judge to which a party objects timely. 28 U.S.C. § 636(b)(1)(C); Fed. R. Crim. P. 59(b)(2), (3). However, portions of a

recommendation to which no party objects are reviewed for clear error. *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). The clear error standard means that the magistrate judge's ruling is overturned only if the district court is "left with the definite and firm conviction that a mistake has been made." *Weeks v. Samsung Heavy Indus. Co.*, 126 F.3d 926, 943 (7th Cir. 1997).

Because Johnson did not file any objection to the magistrate judge's recommendation dated April 2, 2009, this court reviews Magistrate Judge Goodstein's recommendation for clear error. No clear error can be found following review of the motion and the affidavit used to obtain the search warrant at issue. Hence, following review of the reasons set forth by Magistrate Judge Goodstein, there was a substantial basis in the record for the determination of the issuing magistrate judge's conclusion that there was probable cause supporting the search of the property at 43401 Twin Pine Road, Laytonville, California. In other words, this court does not believe that a mistake has been made. To the contrary, the court agrees with Magistrate Judge Goodstein that the facts alleged in the affidavit underlying the search warrant were sufficient to induce a reasonably prudent person to believe that a search of the Twin Pine Road property would uncover evidence of a crime. Therefore,

IT IS ORDERED that the magistrate judge's recommendation of April 2, 2009, is adopted and Johnson's motion to suppress (Doc. 441) is denied.

Dated at Milwaukee, Wisconsin, this 2nd day of June, 2009.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
U. S. District Judge